UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,533	12/27/2004	Brad Lewis	03-593-D	2537

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EXAMINER
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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/519,533	LEWIS, BRAD
	Examiner	Art Unit	
	HEE SOO KIM	2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 July 2008*.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *67-87* is/are pending in the application.
    4a) Of the above claim(s) *55-66* is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *67-87* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date *7/11/08*.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This office action is responsive to restriction filed on July 11th, 2008.

Election/Restrictions

Applicant's election without traverse of Group II in the reply filed on 7/11/08 is

acknowledged.

Claims 55~66 withdrawn from further consideration pursuant to 37 CFR 1.142(b)

as being drawn to a nonelected invention of Group I, there being no allowable generic

or linking claim. Election was made **without** traverse in the reply filed on 7/11/08.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 67~87 are provisionally rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over claims 70~80 of

copending Application No. 10/602,410. Although the conflicting claims are not identical,

they are not patentably distinct from each other because claim 70 of copending

Application No. 10/602,410 contains every element of claim 67 of the instant application

and thus anticipate the claim of the instant application. Claim 67 of the instant

application therefore are not patently distinct from the copending application and as

such are unpatentable over obvious-type double patenting.

This is a <u>provisional </u>obviousness-type double patenting rejection because the

conflicting claims have not in fact been patented. Claims 68~77 of the instant

application are the same as claims 71~80 copending Application No. 10/602,410.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under
section 122(b), by another filed in the United States before the invention by the
applicant for patent or (2) a patent granted on an application for patent by
another filed in the United States before the invention by the applicant for patent,
except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application
filed in the United States only if the international application designated the
United States and was published under Article 21(2) of such treaty in the English
language.

Claims 67, 78~81, 86, and 87 are rejected under 35 U.S.C. 102(e) as being

anticipated by Morris et al. hereinafter Morris (U.S 6,112,206).

<u>Regarding Claim 67</u>,
Morris taught a vehicle diagnostic device comprising:

a first wireless access device that communicates with a replicating device,

wherein the replicating device is located on a movable land-based vehicle and

replicates information stored at a master device remote from the replicating device (Col.

15, Ln. 45~51, system 310 comprises of portable data collection terminals 312 (wireless

device), vehicle 329 for transporting MAS 331 (replicating device), and application

server 330 (master server));

a processor; data storage; and programming instructions stored at the data

storage and executable by the processor to request at least a portion of the replicated

information from the replicating device when the replicating device is within

communicable proximity of the first wireless access device (Col. 16, Ln. 20~22, 32~37;

Col. 17, Ln. 1~5);

wherein the requested information comprises information for configuring at least

one vehicle application obtained for the vehicle diagnostic device (Col. 15, Ln. 57~62),

and

wherein the replication server provides the requested information to the vehicle

diagnostic device in response to the request (Col. 18, Ln. 38~43).

Regarding Claim 78,
Morris taught the vehicle diagnostic device is a handheld device (Col. 15, Ln.

45~46, portable data collection terminals 312).

Regarding Claim 79,
Morris taught the first wireless access device is configured to automatically

detect a beacon signal from the movable land-based vehicle, and

wherein the vehicle diagnostic devices requests the replicated information in response

to the beacon (Col. 16, Ln. 20~22).

Regarding Claim 80,
Morris taught the replicating device receives the information from the master

device after the replicating device is transported by the land-based vehicle into a

coverage area provided by a second wireless access device (Col. 16, Ln. 22~28).

Regarding Claim 81,
Morris taught the second wireless access device couples the replicating device to

the master device when the replicating device is within communicable proximity of the

second wireless access device (Col. 16, Ln. 50~56).

Regarding Claim 86,
Morris taught further comprising: a user interface that displays a status of the

replicated information, and wherein the program instructions further comprise

instructions executable by the processor to prompt a user to determine if the replicated

information on the replicating device should be updated via a remote network (Col. 18,

Ln. 38~60).

Regarding Claim 87,
Morris taught the user interface displays a status that indicates whether the

replicated information is up-to-date, possibly outmoded, or outmoded (Col. 19, Ln.

27~50).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.

3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating
        obviousness or nonobviousness.

Claims 68~77 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Morris in view of Lowrey et al. hereinafter Lowrey (U.S 6,611,740).

Regarding Claims 68,
Morris taught all the limitations of claim 67 however, failed to specifically teach

the at least one vehicle application comprises an application for measuring a voltage.

Lowrey taught an Internet-based vehicle diagnostic system which measures

diagnostic data from vehicles and transmits such data to a website for later access (Col.

5, Ln. 60~64, Fig. 6B).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made, to implement, a vehicle application for measuring data as

taught by Lowrey into Morris' data capture system, as it would allow accurate

troubleshooting by service centers to determine problems with vehicles (Lowrey, Col. 5,

Ln. 18~26).

Regarding Claim 69,
Morris failed to specifically teach the measured voltage is a battery voltage.

Lowrey taught an Internet-based vehicle diagnostic system which measures

diagnostic data from vehicles and transmits such data to a website for later access (Col.

5, Ln. 60~64, Fig. 6B).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made, to implement, a vehicle application for measuring data as

taught by Lowrey into Morris' data capture system, as it would allow accurate

troubleshooting by service centers to determine problems with vehicles (Lowrey, Col. 5,
Ln. 18~26).

Regarding Claim 70,
Morris failed to specifically teach the at least one vehicle application comprises
an application for detecting a voltage.

Lowrey taught an Internet-based vehicle diagnostic system which measures
diagnostic data from vehicles and transmits such data to a website for later access (Col.
5, Ln. 60~64, Fig. 6B).

Therefore, it would have been obvious to one of ordinary skill in the art at the
time the invention was made, to implement, a vehicle application for measuring data as
taught by Lowrey into Morris' data capture system, as it would allow accurate
troubleshooting by service centers to determine problems with vehicles (Lowrey, Col. 5,
Ln. 18~26).

Regarding Claim 71,
Morris taught all the limitations of claim 67 however, failed to specifically teach
the detected voltage is a battery voltage.

Lowrey taught an Internet-based vehicle diagnostic system which measures
diagnostic data from vehicles and transmits such data to a website for later access (Col.
5, Ln. 60~64, Fig. 6B).

Therefore, it would have been obvious to one of ordinary skill in the art at the
time the invention was made, to implement, a vehicle application for measuring data as
taught by Lowrey into Morris' data capture system, as it would allow accurate

troubleshooting by service centers to determine problems with vehicles (Lowrey, Col. 5, Ln. 18~26).

> Regarding Claim 72,
> Morris failed to specifically teach the at least one vehicle application comprises an application for measuring an idle speed.

Lowrey taught an Internet-based vehicle diagnostic system which measures diagnostic data from vehicles and transmits such data to a website for later access (Col. 5, Ln. 60~64, Fig. 6B).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to implement, a vehicle application for measuring data as taught by Lowrey into Morris' data capture system, as it would allow accurate troubleshooting by service centers to determine problems with vehicles (Lowrey, Col. 5, Ln. 18~26).

> Regarding Claim 73,
> Morris failed to specifically teach the at least one of vehicle application comprises an application for detecting an idle speed.

Lowrey taught an Internet-based vehicle diagnostic system which measures diagnostic data from vehicles and transmits such data to a website for later access (Col. 5, Ln. 60~64, Fig. 6B).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to implement, a vehicle application for measuring data as taught by Lowrey into Morris' data capture system, as it would allow accurate

troubleshooting by service centers to determine problems with vehicles (Lowrey, Col. 5, Ln. 18~26).

Regarding Claim 74,
Morris failed to specifically teach the at least one vehicle application comprises an application for measuring an engine rpm.

Lowrey taught an Internet-based vehicle diagnostic system which measures diagnostic data from vehicles and transmits such data to a website for later access (Col. 5, Ln. 60~64, Fig. 6B).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to implement, a vehicle application for measuring data as taught by Lowrey into Morris' data capture system, as it would allow accurate troubleshooting by service centers to determine problems with vehicles (Lowrey, Col. 5, Ln. 18~26).

Regarding Claim 75,
Morris failed to specifically teach the at least one vehicle application comprises an application for detecting an engine rpm.

Lowrey taught an Internet-based vehicle diagnostic system which measures diagnostic data from vehicles and transmits such data to a website for later access (Col. 5, Ln. 60~64, Fig. 6B).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to implement, a vehicle application for measuring data as taught by Lowrey into Morris' data capture system, as it would allow accurate

troubleshooting by service centers to determine problems with vehicles (Lowrey, Col. 5,

Ln. 18~26).

Regarding Claim 76,
Morris failed to specifically teach the at least one vehicle application comprises

an application for measuring a cam anomaly.

Lowrey taught an Internet-based vehicle diagnostic system which measures

diagnostic data from vehicles and transmits such data to a website for later access (Col.

5, Ln. 60~64, Fig. 6B).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made, to implement, a vehicle application for measuring data as

taught by Lowrey into Morris' data capture system, as it would allow accurate

troubleshooting by service centers to determine problems with vehicles (Lowrey, Col. 5,

Ln. 18~26).

Regarding Claim 77,
Morris failed to specifically teach the at least one vehicle application comprises

an application for detecting a cam anomaly.

Lowrey taught an Internet-based vehicle diagnostic system which measures

diagnostic data from vehicles and transmits such data to a website for later access (Col.

5, Ln. 60~64, Fig. 6B).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made, to implement, a vehicle application for measuring data as

taught by Lowrey into Morris' data capture system, as it would allow accurate

troubleshooting by service centers to determine problems with vehicles (Lowrey, Col. 5,

Ln. 18~26).

Claims 82~85 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Morris in view of 'Official Notice'.

<u>Regarding Claim 82</u>,
Morris taught all the limitations of claim 81, however did not specifically teach the

first wireless access device and the second wireless access device each carry out

communications with the replicating device according to an IEEE 802.11 standard.

Morris taught the communication between the portable terminals and the MAS

331 (replicating device) occurs by link 347 (first wireless communication capability) and

the communication between the MAS 331 and WAN 333 occurs by link 349 (second

wireless communication capability) (Col. 16, Ln. 20~26). Although Morris did not

explicitly disclose both wireless communication capabilities are according to an IEEE

802.11 standard, Examiner takes 'Official Notice' in that it was well-known in the art that

wireless communications between various devices are based on the popular IEEE

802.11 standard (i.e. 802.11(b) "WiFi").

<u>Regarding Claim 83</u>,
Morris taught all the limitations of claim 81, however did not specifically teach the

first wireless access device and the second wireless access device each carry out

communications with the replicating device according to a Bluetooth specification.

Morris taught the communication between the portable terminals and the MAS

331 (replicating device) utilizing link 347 and the communication between the MAS 331

and WAN 333 occurs by link 349 (second wireless communication capability) (Col. 16,

Ln. 20~26). Although Morris did not explicitly disclose both wireless communication capabilities are according to an IEEE 802.11 standard, Examiner takes 'Official Notice' in that it was well-known in the art that wireless communications between various devices are based on the popular IEEE 802.11 standard (i.e. 802.11(b) "WiFi").

Regarding Claim 84,
Morris taught all the limitations of claim 81, however did not specifically teach the first wireless access device and the second wireless access device each carry out communications with the replicating device according to an IEEE 802.11 standard.

Morris taught the communication between the portable terminals and the MAS 331 (replicating device) occurs by link 347 (first wireless communication capability) and the communication between the MAS 331 and WAN 333 occurs by link 349 (second wireless communication capability) (Col. 16, Ln. 20~26). Although Morris did not explicitly disclose both wireless communication capabilities are according to an IEEE 802.11 standard, Examiner takes 'Official Notice' in that it is well-known in the art that wireless communications between various devices are based on the popular IEEE 802.11 standard (i.e. 802.11(b) "WiFi").

Regarding Claim 85,
Morris taught all the limitations of claim 81, however did not specifically teach the first wireless access device and the second wireless access device each carry out communications with the replicating device according to a wireless local area network (WLAN) specification.

Morris taught the communication between the portable terminals and the MAS 331 (replicating device) occurs by link 347 (first wireless communication capability) and

the communication between the MAS 331 and WAN 333 occurs by link 349 (second wireless communication capability) (Col. 16, Ln. 20~26). Although Morris did not explicitly disclose both wireless communication capabilities are according to (WLAN) specification, Examiner takes 'Official Notice' in that it is well-known in the art that wireless communications based on WLAN specification such as the IEEE 802.11 standard is widely used in wireless technologies.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEE SOO KIM whose telephone number is (571)270-3229. The examiner can normally be reached on Monday - Thursday 8:00AM - 5:30PM

EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. K./
Examiner, Art Unit 2457
10/14/0

/ARIO ETIENNE/

Supervisory Patent Examiner, Art Unit 2457